

MENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C2-21-16  
Baltimore, Maryland 21244-1850



Center of Clinical Standards and Quality/Survey & Certification Group

March 25, 2015

Margaret VanAmringe  
Executive Vice President for Public Policy  
and Government Relations  
The Joint Commission  
601 13<sup>th</sup> Street, NW  
Suite 560 South  
Washington, DC 20005

Dear Ms. VanAmringe:

The Centers for Medicare & Medicaid Services' (CMS') technical review team has completed its review of The Joint Commission's (TJC's) February 13, 2015 response to findings related to the survey observation conducted on October 20-24, 2014 at Springfield Hospital Center, Sykesville, MD. This survey observation was conducted as part of TJC's re-application for CMS approval of its Medicare psychiatric hospital accreditation program. The survey observation is designed to assess processes and procedures for completing an accreditation survey as described in TJC's application, and in accordance with Medicare policy and procedure.

§488.26(b) The decision as to whether there is compliance with a particular requirement, condition of participation, or condition for coverage depends upon the manner and degree to which the provider or supplier satisfies the various standards within each condition....

Concern # 1: Determining Level of Citation and Falsification of Medical Records:

Determining Level of Citation:

We acknowledge that TJC provides surveyors with a multitude of resources and has a robust process for the review of surveyor findings and documentation when any of the factors listed in TJC's response are present and surveys have been flagged for review. However, none of the listed factors would be useful in identifying cases of potential under-citation, so we continue to be concerned that TJC's review process has an inherent bias toward preventing over-citation only.

Action Item: Please submit an action plan to address the concern related to the routine review of survey reports when the survey report has not been flagged for review by TJC's Standards Interpretation Group (SIG). If TJC already conducts reviews of survey reports, not flagged by the list provided in its response, please provide CMS the percentage of surveys reviewed and the outcome of such reviews.

**Falsification of Medical Records:**

TJC's response to the issue of falsification of medical records does not fully address the issue identified in our January 21, 2015 correspondence. We do not agree that the definition of falsification, as it relates to application information provided to TJC meets the expectation for complete and accurate documentation within a medical record. The issue identified involved physicians, within the organization, knowingly and deliberately documenting assessment findings for examinations which physicians admit were not conducted, in order to avoid being cited as deficient on internal audits. We do not view this as merely an "unfortunate work-around," as alleged by TJC's response. An accurate medical record is an essential component of providing safe and effective care. If portions of the history & physical examination were not medically indicated for a specific patient, the hospital should have provided physicians a way to simply identify that component as not applicable. We agree that care or a service that is not medically indicated should not be provided to patients, but falsification of the patient's medical record is not an appropriate vehicle for accomplishing this.

In addition, TJC's response indicated that CMS had implied that the facility minimized the seriousness of appropriate documentation. In fact, our letter was referring to the behavior of TJC's surveyors and Field Director. Our letter stated: "By the facility's own admission, the surveyor confirmed that medical records were being falsified in order to satisfy an internal chart review. This practice is contrary to the Medicare requirements for medical records and also raises questions about the quality of care rendered to the hospital's patients. However, the surveyors' (and the onsite Field Director's) response to the facility was that "all facilities do this". The comments made by TJC staff minimized the importance of the issue." If, in fact, all facilities that TJC is familiar with falsify medical records in this manner, it suggests that TJC has tolerated and allowed to become widespread in its accredited facilities a practice that not only violates Medicare standards but which is also potentially dangerous for patients.

Because this survey report also contained other condition- level deficiencies, in accordance with TJC's policy the report received a review from a staff member in SIG. Nevertheless, the citation was not raised to the condition level. Thus, there appears to be a systemic lack of understanding of the seriousness of this deficiency at several levels of TJC's organization, making this is of particular concern.

**Action Item:** Please submit an action plan to address the education and training of surveyors SIG personnel and Field Directors and others, if applicable, who conduct survey report reviews for the purposes of assuring that citations are made at the appropriate level (i.e. Condition versus Standard).

**Concern # 2 Compliance with Standards:**

We have continued concern about the survey team's (and Field Director's) minimization of the importance of compliance with accreditation and Medicare standards in comments made to the hospital's staff during the survey. Comments such as, "I know psych hospitals across the nation don't do this", "I don't like this requirement either", "All facilities do this", and "Things I don't like, I tend not to pay attention to", were made to the facility staff throughout the five-day survey. Additional comments made by the survey team (and Field Director) were included in our original correspondence.

TJC's response to this issue highlighted the provision of ongoing supervision and evaluation of performance from experienced Field Directors for all surveyors. However, this is not responsive, given that the cavalier attitude observed during the survey extended beyond the surveyor to include the Field Director, CMS is concerned about the training provided to Field Directors.

**Action Item:** We request that TJC submit an action plan to ensure that Field Directors and their supervisors understand the importance of compliance with all accreditation standards and do not make statements to facilities minimizing the significance of deficient practices observed.

**§488.8(a)(2)(ii) [Federal review of accreditation organizations.] The comparability of survey procedures to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;**

**Concern # 1: Immediate Threat to Life or Safety Situation:**

We acknowledge that the survey team spent a significant amount of time investigating and discussing the issue of the attempted suicide incident cited in our original letter. We do not agree with the TJC response that addressing only the human factor which had contributed to the near successful suicide attempt mitigated the risk of future reoccurrences. We are concerned that TJC would suggest that, because the facility had experienced no reoccurrences between the original event and the survey that this was sufficient evidence that no ongoing risk to patient safety and, therefore, no immediate threat to life existed at the time of the survey.

According to the TJC response, the facility has yet to address, in a plan of correction, the ligature risks in the bathrooms, related to open plumbing and hinges. In addition, the plan of correction accepted by TJC only addressed the open grab bars in these rest rooms. Based on the evidence provided by TJC, it is CMS' position that the ligature risks observed during the survey continue unchecked and uncorrected. This poses an ongoing safety risk to patients.

The findings observed during the onsite survey, along with the continued unmitigated ligature risks meet TJC's definition of an Immediate Threat to Life or Safety (ITL) and CMS' definition of an Immediate Jeopardy (IJ). We continue to be unclear as to why this issue was not cited as such. This raises serious concerns related to the process utilized by TJC and the training of TJC surveyors as well as other staff at all levels of the organization involved in making the determination regarding the presence of an ITL situation.

Also, TJC's response indicated that a follow-up survey had been conducted within 45 days of the October 24, 2014 survey, which means that the follow-up survey would have been completed on or before December 8, 2014. The documentation contained in TJC's response stated:

*"The renovations have begun where the most acute patients reside. Enclosing of grab bars began in October 2014. The expected completion time for this project; February 2015 for Solomon Building, when Solomon is completed, enclosing of grab bars in the Hitchman and then onto Mckeldin buildings will be completed..."*

We question how the condition-level finding related to ligature risks could have been cleared during this follow-up survey. The initial building being renovated was not expected to be completed before February 2015, with subsequent buildings being addressed after that date. The other ligature risks were not even addressed in the plan of correction.

**Action Item:** We request that TJC provide the content of training provided to its surveyors, Field Directors, SIG staff, consultative medical staff and any other decision-making groups, related to identifying an ITL. If this training and education does not include the actual process or algorithms used in discussing and making such a determination, please provide this separately. We also request TJC policies and surveyor education/guidelines related to the appropriate determination that a facility has corrected issues previously cited as a condition-level finding, when conducting a follow-up survey.

**Concern # 2: Medical Record and Credentialing and Privileging Reviews:**

Although the observed review of credential files during this survey may have been atypical of a TJC psychiatric hospital survey, CMS is concerned that other such cases could occur. CMS is unclear as to how TJC monitors survey activities in order to assure that an adequate and appropriate representative sample of credential files have been reviewed during each survey.

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**Action Item:** We request that TJC provide further evidence of how it monitors survey activities to assure that an appropriate number and representative sample of credential file reviews have taken place for each survey.

**§488.9 [Onsite observation of accreditation organization operations.]** As part of the application review process, the validation review process, or the continuing oversight of an accreditation organization's performance, CMS may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and to assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, the review of documents, auditing meetings concerning the accreditation process, the evaluation of survey results or the accreditation decision-making process, and interviews with the organization's staff.

At our February 19, 2015 meeting, we discussed the purpose of the CMS observation survey and agreed to the following process during the conduct of the survey observation:

- CMS staff will be fully included and have full access to all aspects of the on-site survey activities, calls to resource staff, and survey team discussions as well as direct communication with surveyors as outlined in the regulation above;
- The TJC Washington, DC, office or other TJC representative will facilitate CMS staff access to the entire on-site survey process as outlined above;
- CMS observers as well as any TJC observer(s) present will conduct themselves in a manner to minimize disruptions to the survey team, survey process and the facility;
- CMS observers as well as any TJC observer(s) present will not comment on any aspect of the survey, observations or deficiencies in the presence of facility staff;
- If by the day prior to the end date of the survey, it appears that the survey team has not identified a serious deficient practice that a CMS observer has noted, the CMS observer

may raise this as an area of discussion with the survey team. However, the CMS observer must first provide the survey team with adequate time to identify the area of deficiency before raising the issue; and,

- If the survey team fails to identify an ITL situation, as applicable, CMS observers may contact the appropriate Regional Office to authorize a complaint investigation.

Please submit a written response to these areas of concern by Wednesday, April 15, 2015. If you have any questions regarding this letter, please do not hesitate to contact Monda Shaver at (410) 786-3410 or [monda.shaver@cms.hhs.gov](mailto:monda.shaver@cms.hhs.gov).

Sincerely,



Patricia Chmielewski  
Deputy Director  
Division of Acute Care Services